

Details	DD	MM	YY
Date of Judgment	19	10	2022
Date of filing	22	11	2017
Duration	27	10	04

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
AHMEDABAD CITY (MAIN) AT AHMEDABAD**

COMPLAINT CASE NO. 932 OF 2017

Mrs. Savitriben Kantilal Desai,
At Bijadevi, Post Mograni,
Nandurbar,
Maharashtra-425416.

Complainant

Versus

Bharti Axa Life Insurance Co. Ltd.

1. Through Branch Manager,
Ahmedabad RO Branch,
4th Floor, 3rd Eye Building, Panchvati,
C. G. Road, Ellisbridge,
Ahmedabad.
2. Through Branch Manager – H. O.
Unit 601-602, 6th Floor, Raheja Titanium,
Off Western Express Highway,
Goregaon (E), Mumbai – 400063.

Opponents

Mr. D. V. Bhavsar, Ld. Advocate for the Complainant

Mr. Mauleen Marfatia, Ld. Advocate for the Opponents

Coram : Mr. K. B. Gujarathi, President

Ms. Y. T. Mehta, Member

ORDER

Per Mr. K. B. Gujarathi, President

This complaint has been filed by the complainant as per Section 12 of the Consumer Protection Act, 1986, against the opponent, alleging deficiency in service and unfair trade practice, with the case that,

1. The complainant is the mother of the original policy holder late Anil Desai, who was unmarried and was running a General Store at Bijadevi, Maharashtra and getting income about Rs. 2,00,000/- P.A. He was also holding Pan Card.
2. It is also case of the complainant that, in November, 2015, an authorized agent of the opponent company had come to the Anil Desai and requested to take one life insurance policy. Therefore, the Anil Desai had taken life insurance policy and prepared a proposal with the help of agent of the opponent and also paid Rs. 23,950/- to that agent including the amount of premium of Rs. 12,957.89/- and remaining amount for medical check-up.
3. It is also case of the complainant that, on verifying the proposal form of the Anil Desai, the opponent company had issued a life insurance policy for Rs. 10,00,000/- having policy No. 501-3737027. But, after taking the life insurance policy, Anil Desai had some health problem and severe fever, therefore, he went to Shifa Clinic of Dr. M. A. Shaikh, on 30/08/2016 to get the medical treatment. The doctor had diagnosis Right hypochonderic and

during the treatment, he was advised and directed to take pathological laboratory report. Therefore, Anil Desai had taken pathological lab. Report of Mahi Computerized Clinical Laboratory at Nandurbar for biochemistry liver test and clinical pathology urine test for bile salt / bile pigment. Thereafter, doctor continued the treatment from 30/08/2016 to 31/08/2016, but on 01/09/2016, during the treatment Anil Desai died at home.

4. It is also case of the complainant that, thereafter, the mother of the Anil Desai got the life insurance policy, and thereafter, she had submitted death claim on 19/09/2016 of life assured Anil Desai for getting the amount of the life insurance as a nominee and mother of Anil Desai. The complainant had also submitted all the necessary documents along with the death claim. However, the opponent company has repudiated/rejected the death claim of the complainant on the ground that, deceased life assured (DLA) Anil Desai was having pre-disease and that fact was suppressed by the life assured Anil Desai.
5. It is also case of the complainant that, the LA Anil Desai was having good health or had no any health issue or complaint. Therefore, the opponent has illegally and erroneously repudiated the death claim of the complainant. So, the complainant has filed this complaint as per the provisions of the Consumer Protection Act, for getting the amount of Rs. 10,00,000/-, the sum insured of life insurance policy of LA along with the interest, costs of litigation and compensation.
6. On admitting the complaint for consideration, show cause notices issued to the opponents. On notice, opponent appeared through advocate and filed its written statement vide Exh.8.

7. The opponent has denied each and every allegations, contentions and averments of the complainant made in the complaint against the opponent company and further contended that, the complainant has filed this complainant with mala fide and dishonest intentions. It is further contended that, the life assured Anil Desai had obtained insurance policy fraudulently, dishonestly and by making misrepresentation and suppressing of material fact regarding the past medical history of renal disease diagnosed prior to the insurance policy.
8. It is also contended that, as per the provision of Section 45 of the Insurance Act, 1938, the Insurance Company can cancel the policy on the ground of concealment of material fact. Therefore, the death claim submitted by the complainant was rejected as per the terms and conditions of the life insurance policy issued to life assured Anil Desai. Therefore, on the basis of the contention of the opponent, the opponents have prayed to dismiss the complaint with costs.
9. After giving an opportunity of leading evidence through affidavit and documentary evidence to both the sides, the matter was taken up for final hearing.
10. When this complaint came before the Commission for final hearing, we heard Ld. Advocate Mr. D. V. Bhavsar, for the complainant and Ld. Advocate Ms. N. K. Vora, on behalf of the Ld. Advocate Mr. Mauleen Marfatia, for the opponents.
11. The Ld. Advocate for the complainant has submitted according to the contains of the complaint and further submitted that, the son of the

complainant had taken life insurance policy of the opponent and after taking the policy, the life assured Anil Desai, had died on 01/09/2016 due to Right hypochonderic as per the diagnosis of Dr. Shaikh, at Nandurbar. The deceased had no any health problem before the taking of the life insurance policy and there is no any evidence that he had any health problem before the proposal of the policy. When the complainant had made death claim of her son Anil Desai, to the opponent, the opponent has repudiated the said death claim on the ground that, the DLA had suppressed the material fact of his health, therefore, the death claim is not payable. However, there is no reliable evidence with the opponent regarding the health problem of the DLA. The opponent has produced alleged certificate given by Dr. Shaikh, who has treated the DLA Anil Desai. However, the said certificate is false and bogus. The complainant has examined the Dr. Shaikh and who has been cross-examined by the opponent, and has specifically stated that, the certificate produced by the opponent was not written in his hand writing and he has not given that certificate. Therefore, the certificate produced by the opponent is bogus and fake. So, no reliance can be placed on that certificate.

12. It is also submitted that, except that certificate, the opponent has not brought on record any reliable evidence regarding the alleged health problem of the deceased Anil Desai. It is also submitted that, the opponent had appointed investigator in the case of the complainant, however, the investigator also could not find out any reliable evidence in support of the plea of the opponent. On the contrary, the documents produced by the opponent regarding the investigation in support to the case of the complainant and on that basis, it has also come on record that, DLA had no any disease or serious health problem before the proposal of the life insurance policy. Therefore, the opponent has arbitrarily, illegally and

erroneously repudiated the death claim of the complainant. The complainant is the mother and nominee of the deceased Anil Desai, and therefore, the complaint is legally maintainable. So, the complaint may be allowed with interest, costs and compensation.

13. On the other hand, the Ld. Advocate for the opponent has submitted according to the contains of the written statement and further submitted that, the DLA had died within a year from the date of issuing life insurance policy. Therefore, as per Section 45 of the Insurance Act, 1938, the Insurance Company has right to ask certain material fact from the life assured or the nominee or the relative of the life assured. The life assured had not disclosed true facts about his health and he has stated in the proposal form that, he has no any disease prior to the proposal. However, during the investigation of the death claim of the complainant, it was found that, the DLA was suffering from serious disease prior to the proposal and the DLA has suppressed that material fact from the Insurance Company and suppressing the material fact had obtained life insurance policy. So, the opponent has repudiated the death claim of the complainant regarding the death of Anil Desai, life assured.

14. It is also submitted that, though the complainant has examined Dr. Shaikh as her witness in cross-examination, he has stated certain thing which is supporting to the plea of the opponent. Therefore, considering the evidence on record regarding the investigation made by the opponent as well as certificate issued by Dr. Shaikh, it may be held that, DLA had suppressed the material fact about his health problem. There is no deficiency on the part of the opponent. So, the Ld. Advocate for the opponent has prayed to dismiss the complaint with costs.

15. Considering the respective submissions of both the sides, in the light of their pleadings as well as documentary evidence submitted by them, we are of the view that, there is no dispute regarding the following aspects :

- 1) That, the life assured Anil Desai, had made a proposal for the life insurance in the month of November, 2015, to the opponent and on the basis of that proposal, the opponent had issued life insurance policy under the policy No. 501-3737027, dated 30/11/2015 for Rs. 10,00,000/-.
- 2) That, the life assured Anil Desai, has died on 01/09/2016.
- 3) That, the complainant Savitriben Kantilal Desai, the mother of life assured and nominee of the said insurance policy had made death claim with the opponent and the said death claim is repudiated by the opponent by letter and order dated 27/10/2016.

16. Being aggrieved by the repudiation of the death claim of the DLA Anil Desai, the mother of the deceased and nominee of the insurance policy has filed this complaint as per the provisions of the Consumer Protection Act.

17. This complaint has been filed by the mother of the DLA Anil Desai, as a nominee of the deceased for life insurance policy. She is also legal heir of the DLA Anil Desai. The death claim submitted by the complainant-nominee is repudiated by the Insurance Company. Therefore, in our view, the complainant is competent person to file the complaint under the Consumer Protection Act.

18. As per the law of nomination, the debtor is bound to pay the amount of debt to the nominee and if the amount of debt is paid by the debtor to the

nominee then he gets valid discharge for the amount of debt. Here in this case, the complainant is not only legal heir and mother of the deceased Anil Desai, but also nominee of the insurance policy. The amount of insurance can be termed as a debt and opponent as a debtor. In this case, the complainant is a mother of deceased Anil Desai and also nominee of the life insurance policy. Therefore, she was competent person to receive the insured amount from the opponent. As the opponent has repudiated the death claim of the complainant, the nominee of the insurance policy, she has every legal right to file a complaint as per the provisions of the Consumer Protection Act, on the ground of deficiency in service against the insurance policy. Therefore, in our view, the complainant is the competent person to file a complaint due to the alleged deficiency in service on the part of the Insurance Company, the opponent.

19. There is only one dispute between the parties, and that dispute is regarding the alleged suppression of the material fact about the so called health problem of the deceased Anil Desai. It is undisputed fact that, the deceased had made a proposal for issuing life insurance policy for Rs. 10,00,000/- and he had also made proposal in writing to the opponent. In the said proposal, DLA has stated that, he has no any health issue or health problem or any prior disease.

20. It is undisputed that that, DLA Anil Desai, has died on 01/09/2016 i.e. within the year of issuing of the life insurance policy of Rs. 10,00,000/- in his favour. It is true that, as per the provision of Section 45 of the Insurance Act, 1938, the Insurance Company has right to ask any material fact or evidence for material fact if the insured is died within 3 years from the date of issuing policy.

21. It is true that, the health problem of the any life assured or insured person is a material fact and it is to be declared honestly while making proposal of any life insurance policy or any other mediclaim insurance policy. In this case, the life assured Anil Desai, has died within a year from the date of issuing of the life insurance policy. Therefore, the opponent can raise dispute regarding the health problem of the life assured and also asked necessary explanation or information from the concerned people.
22. Here in this case, after receiving the death claim of life assured Anil Desai, from the complainant, the mother of the deceased, the opponent Insurance Company had undertaken investigation regarding the health problem of the DLA Anil Desai. On the basis of that alleged investigation and alleged evidence of health problem of the deceased Anil Desai, the opponent had repudiated the death claim of deceased Anil Desai.
23. In this case, the complainant has produced a documentary evidence with a list vide Exh. 3, the supported documents including claim repudiation letter dated 27/10/2016 at Exh. 3/1. Life insurance policy documents including proposal form, claimants statement, deposit receipt, declaration about quality of business, school leaving certificate, death claim of Anil Desai, certificate issued by Dr. M. A. Shaikh of Shifa Clinic, at Nandurbar. She has also produced the statement recorded by the so called investigator of the opponent and prescription of Shifa Clinic with pathological lab report of Mahi Computerized Clinical Laboratory at Nandurbar.
24. While going through the said documentary evidence produced by the complainant, it can be said that, the life assured Anil Desai was having a life

insurance policy of the opponent as per the case of the complainant and he died on 01/09/2016 at Bijadevi, Dist. Nandurbar, Maharashtra and his death entry has been duly registered in the Grampanchayat Bijgaun at Bijadevi on 03/09/2016. The deceased Anil Desai was 19 years at the time of his death and he was educated up to the 4th standard in Jilla Parisad Marathi School, Bijadevi, Ta. Navapur, Dist. Nandurbar, and he had left the school on 15/05/2007. It can be said that, the insurance policy of opponent consists so many different type of documents and the proposal was prepared by the Chandani Parmar, Agent, having agent code No. 10122904166091 in English language. The said proposal form was signed by the DLA Anil Desai in devnagari script. So, on the basis of the documentary evidence produced by the complainant, it can certainly be said that, the proposal form was prepared and duly field up by the agent of the opponent company, therefore, the averments made by the complainant regarding the proposal form and contains of it, can be said true and acceptable for the purpose of determining this complaint.

25. The complainant has also produced the certificate given by Dr. M. A. Shaikh of Shifa Clinic along with the policy documents vide page No. 64. The said certificate has been produced by the opponent along with its documents list at Exh. 9 vide page No. 142. Wherein, Dr. M. A. Shaikh has stated that :

“This is to certify that Mr. Anil Kantilal Desai, 19 years was my OPD basis patient dated 30/08/2016 he was came to my clinic c/0 Rt. Hypochonderic pain fever. I have given treatment i/v fluids lab. live 52 dated 01/09/2016. Patient relatives call me at home but patient not more seen. I have examine routinely but patient no more seen. B.P. not found also pulse shrinkage eye public dilated. I have declared to death due to Infective hepeticities at home at 02:00 a.m.”

26. So, on the basis of the documentary evidence produced by the complainant including the certificate given by Dr. Shaikh of Shifa Clinic, that the doctor has not stated anything about the alleged history of the ill health as contended by the opponent Insurance Company.

27. The complainant has produced a letter of claim repudiation dated 27/10/2016 of opponent vide Exh. 3/1, wherein, it is stated by the opponent that,

“Our investigation has established that the life insured was a known case of Chronic Renal Disease prior to applying policy with us. This history is prior to his proposal for insurance and that all the aforesaid replies were false.

In view of the above, it is clear that the life insured has given false and misleading information to the company and had the life insured replied to the aforesaid questions truthfully and correctly in the proposal form, the company would not have issued the above mentioned policy at all. It is evident that the company has been led to issue the policy by suppressing material facts regarding his past medical history. “

28. While the opponent has also produced its documentary evidence along with list at Exh. 9. While going through the said documentary evidence, it can be said that, the documentary evidence produced by the complainant are again produced by the opponent also. The opponent has also produced one certificate of Shifa Clinic vide Exh. 9/6 and the plea of the opponent is mainly based on the certificate of Shifa Clinic produced vide Exh, 9/6. Except this certificate, the opponent has not produced any other documents in support of its plea of suppression of material fact regarding the alleged ill

health of DLA Anil Desai. While going through the said certificate, it is stated in the said certificate in the following manner :

“This is to certify that Anil Desai was my OPD basis patient. He was died dated 01/09/2016. I have given died declaration and said cause of death Hepetities but his my old patient and before hepities, his also suffering from Renal disease also, Renal disease seen last 3-4 years. I have advised that time opinion of higher centre but I not know he was gone which hospital.”

29. So, considering the certificate issued by Dr. Shaikh, of Shifa Clinic and produced by the complainant and the certificate produced by the opponent of Shifa Clinic vide Exh. 9/6, it can certainly be said that, the hand writing of both the certificate is different. The language used in both the certificate is also different. In the certificate produced by the complainant, there is no grammatical and spelling mistake. However, in the certificate produced by the opponent, there are so many mistakes of grammar as well as spelling. The signature made in both the certificate seems to be different. Therefore, it can be said that, the certificate produced by the opponent has not been issued by Dr. Shaikh of Shifa Clinic.

30. The complainant has also examined Dr. Sahikh of Shifa Clinic, as her witness vide page Nos. 196 to 198, who has stated that, the certificate produced by the opponent vide Exh. 9/6 has not been issued by him and it has not been written in his hand writing. But one person of the Insurance Company had come in his clinic and had obtained one blank letterhead from him. So, as per the evidence of the said witness, the certificate produced by the opponent has not been issued by him and it is fake and bogus. The said witness has been cross-examined by the Ld. Advocate for the opponent, but

nothing has been brought on record to disbelieve the oral evidence of the said witness. So, considering the oral evidence of the said witness Dr. M. A. Shaikh and certificate produced by the opponent as well as certificate produced by the complainant, we are of the view that, the certificate produced by the opponent has not been issued by Dr. Shaikh himself, but it has been prepared by the opponent Insurance Company or through any other person or its investigator. Therefore, no reliance can be placed on the said certificate. So, on the basis of the certificate, it cannot be said that, DLA Anil Desai was suffering from any disease including mentioned in the certificate renal disease prior to the proposal of life insurance policy.

31. The opponent has also not produced any other documents including the medical treatment that might have taken by the life assured Anil Desai for alleged disease of renal disease prior to the proposal. The opponent has also not produced the report of investigator and the statement recorded by the investigator as per the plea of the opponent, the opponent has stated in claim repudiation letter dated 27/10/2016 about the investigation and stated that, Our investigation has established that the life insured was a known case of Chronic Renal Disease prior to applying policy with us. Therefore, it was the duty of the opponent to bring on record, the necessary documents regarding the investigation which had undertaken for the purpose of prior disease/illness of the life assured Anil Desai. On the contrary, the complainant has produced certain statement recorded by the investigator of the opponent along with the list at Exh. 3, wherein, not a single witness has supported to the plea of the opponent regarding the prior disease or illness of the deceased Anil Desai. But, they have stated that, Anil Desai had not any health problem or disease prior to the proposal of the insurance policy. Therefore, it can be said that, there is no any supporting evidence with the

opponent regarding its plea. Therefore, there is no substance in the plea of the opponent.

32. As per the provisions of Section 38(10), every proceedings before the District Commission is a judicial proceedings within the meaning of Section 193 and 228 of the Indian Penal Code, and District Commission is also a Criminal Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. As per the settled law, if the forgery is made in the record of the judicial proceedings and in the Court premises, then the complaint of the false evidence of the forgery etc. is required to be filed by the concerned Court or any Subordinate Officer by order of the Court. As per the provisions of Section 38(10), the complaint can be filed in the Commission itself, however, it is no mandatory to file a complaint by the Court or any Subordinate Officer by order of the Court. Because, the certificate produced by the opponent has been prepared out of the Court means Commission. Therefore, any other person including the complainant can file a complaint for the purpose of production of false evidence in the Commission as per the provisions of Section 195 read with Section 345 of Cr.P.C.

33. As we are of the view that, there is no evidence in support of the plea taken by the opponent regarding the suppression of material fact about the ill health of the deceased Anil Desai. We also hold that, the DLA had not suppressed any material fact while making the proposal of life insurance policy. Therefore, the complainant, mother and nominee of the deceased is entitled for the insured amount of Rs. 10,00,000/- from the opponent and opponent is legally liable to pay the amount of insured of the life insurance policy i.e. Rs. 10,00,000/- to the complainant. As there is dispute between

the service provider and the life assured or nominee which can be termed as a consumer dispute. This Consumer Commission is competent to entertain the complaint of the complainant and exercise jurisdiction for determining it.

34. While acting as a President of District Consumer Disputes Redressal Commission, Ahmedabad (City Main), I personally as well as our Commission including Member have experienced that to avoid the amount of insurance policy means insured amount the Insurance Companies are taken false and frivolous plea and also dare to produce false, fake and bogus evidence or documentary evidence. They do not afraid from taking a false and frivolous plea as well as to produce fake and bogus documentary evidence in support of false plea. Therefore, this attitude of the Insurance Companies is required to be deprecated and in such type of cases, it is also necessary to impose the compensation of considerable amount. So, that the Insurance Company would fear to take such type of false and frivolous plea as well as to produce false and fake evidence including the documentary evidence.

35. The opponent has also produced false evidence in form of fake and bogus certificate in the name of Shifa Clinic. Therefore, in our view, the complainant is entitled for considerable amount as a compensation for the harassment including mental agony from the opponent, and if the said compensation is fixed at Rs. 1,00,000/-, then in our view, that amount of compensation would be just, proper and reasonable.

About Interest :-

36. In order/judgment dated 06/10/2022 of CC No. 1416 of 2019, this Commission has discussed in detailed the rate of interest to be granted and

the rate of interest is fixed 8% P.A. including the interest at the rate of 2% P.A. as per the guidelines of IRDAI. Therefore, to keep the length of the judgment in minimum pages, we do not repeat the same in this order. So, the rate of interest is awarded accordingly.

37. So, in view of the aforesaid discussion and reasoning, we are of the view that, the complaint filed by the complainant deserves to be allowed with costs. Hence, we pass the following final order.

O R D E R

- The complaint filed by the complainant vide CC No. 932 of 2017 is hereby allowed with costs.
- The complainant is entitled for Rs. 10,00,000/- (Rupees Ten Lakh Only) the amount of death claim, from the opponents, alongwith interest at the rate of 8% P.A. from the date of non-payment of the claim for that amount i.e. **27/10/2016** till the realization of the amount of award including interest at the rate of 2% P.A. as stated in the guidelines of the IRDAI.
- The complainant is also entitled Rs. 1,00,000/- (Rupees One Lakh Only) as a compensation for physical harassment and mental agony and Rs. 10,000/- (Rupees Ten Thousand only) as a costs of this litigation from the opponents.
- The opponent do pay the aforesaid whole amount of award to the complainant within a period of one month. If the opponent fails to pay the said amount within one month, then the complainant shall be entitled

additional interest at the rate of 1% P.A. from the expiry of the one month.

- Registry is directed to provide the copy of this judgment to both parties free of cost.

Pronounced in open court today on 19/10/2022.

(Y. T. Mehta)

Member

DCDRC, Ahmedabad – City (Main)

(K. B. Gujarathi)

President

DCDRC, Ahmedabad – City (Main)